



CGB-CC-0360

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December 30, 2005

**VIA HAND DELIVERY**

**RECEIVED**

**DEC 30 2005**

Federal Communications Commission  
Office of Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554  
Attention: CGB Room 3-B431

RE: Television Wisconsin, Inc. (FRN: 0002-7155-63)  
Station WISC-TV/DT, Madison, WI (Facility ID: 65143)  
**Request for Exemption from Closed Captioning Requirement**

Dear Ms. Dortch:

Enclosed on behalf of Television Wisconsin, Inc., ("Television Wisconsin"), by counsel and pursuant to Section 79.1(f) of the Commission's rules, are an original and two (2) copies of a Request for Exemption from Closed Captioning Requirement for Television Wisconsin's program "Sidelines."

Please contact undersigned counsel with any questions regarding this request.

Respectfully submitted,

Robert J. Rini

cc: Amelia Brown, FCC

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Voice: 202.296.2007 | Fax: 202.296.2014  
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**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
	)	
Television Wisconsin, Inc.	)	CSR _____
Petition for Exemption from	)	
Closed Captioning Requirements	)	
	)	
	)	
To: Office of the Secretary		
Media Bureau		

**Petition for Exemption from Closed Captioning Requirements**

Television Wisconsin, Inc., ("Television Wisconsin"), by counsel and pursuant to Section 79.1(f) of the Commission's rules, hereby requests an exemption from the closed captioning rules for a period of three years for a local sports program it produces called "Sidelines." As shown herein, an exemption is proper because compliance with the rules presents an undue burden due to the cost of captioning relative to the revenues attributable to the "Sidelines" program.<sup>1</sup>

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<sup>1</sup> An exemption is necessary because "Sidelines" cannot be considered an exempt program under Section 79.1(d) of the Commission's rules. Section 79.1(d) provides that any video programming or video programming provider that meets one of 13 criteria shall be exempt from captioning requirements:

- (1) programming subject to contractual captioning restrictions;
- (2) waiver of the captioning requirement by the FCC;
- (3) programming other than English or Spanish language;
- (4) primarily textual programming;
- (5) programming distributed between 2 a.m. and 6 a.m. local time;
- (6) interstitials, promotional announcements and public service announcements;
- (7) Educational Broadband Service programming;
- (8) locally produced and distributed non-news programming with no repeat value;
- (9) programming on new networks;
- (10) primarily non-vocal musical programming;
- (11) captioning expense in excess of 2% of gross revenues;
- (12) channels producing revenues of under \$3,000,000; and
- (13) locally produced educational programming.

Under the FCC Rules, "Sidelines" cannot be deemed an exempt program. There are no contractual captioning restrictions, and the FCC has not yet waived the captioning requirement. "Sidelines" is produced in English, is not primarily textual and is not transmitted solely in the late-night hours.

## *Background*

Television Wisconsin is a FCC-licensed broadcaster and CBS affiliate in Madison, Wisconsin. Television Wisconsin operates WISC-TV, WISC-DT and a multicast UPN channel using a portion of the WISC-DT spectrum. Television Wisconsin produces the "Sidelines" program and broadcasts it over WISC-TV, WISC-DT and on its multicast UPN channel. In addition, and a third-party broadcaster carries the program on station WMLW-LP in Milwaukee.

The "Sidelines" program is a weekly 30 minutes sports-talk program with a panel of local sports writers and broadcasters. Discussion centers on items of local sports interest, including coverage of the University of Wisconsin, local high school teams and other sports teams in Wisconsin. The show has been on the air for eight years, and it currently airs three times per week on WISC-TV/WISC-DT, up to three times per week on WISC-DT's multicast UPN channel, and once per week on WMLW-LP. Television Wisconsin wishes to make this local program available for broadcast on commonly owned station WKBT-TV and to other third-party broadcasters in the area who may have an interest in a local sports program.

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"Sidelines" is not an interstitial, promotional announcement or a public service announcement, and it is not carried on an EBS station. While the program is locally produced and distributed non-news programming, the show is carried multiple times in a broadcast week on more than one channel. The show has at best limited repeat value because it generally deals with current sports events of the previous week. In addition, WISC-TV is not a new network. Furthermore, "Sidelines" is not musical programming. Also, the captioning expense does not exceed 2% of Television Wisconsin's gross revenues and the channel does not produce annual revenues of under \$3 million. Finally, WISC-DT is not a public television station, so "Sidelines" does not constitute locally produced educational programming.

### *Basis for Exemption*

Section 79.1(f) provides that a “video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements.”<sup>2</sup> Petitions will be granted upon a showing that “compliance with the requirements to closed caption video programming would cause an undue burden [defined as] significant difficulty or expense.”<sup>3</sup> The Commission will consider four factors in making an “undue burden” determination: (i) the nature and cost of the closed captions for the programming; (ii) the impact on the operation of the provider or program owner; (iii) the financial resources of the provider or program owner; and (iv) the type of operations of the provider or program owner. Congress did not require a Petitioner to satisfy all four factors to obtain relief.<sup>4</sup> Television Wisconsin respectfully submits that, on balance, these factors support the requested exemption.

With respect to factor one, the nature and cost of the closed captions, Television Wisconsin submits that, as detailed in the attached affidavit of Thomas Bier, Vice President and Station Manager of Television Wisconsin, the station must rely on outside captioning services to comply with the FCC’s requirements. Based on existing captioning contracts, Television Wisconsin estimates that the cost to caption per hour would be \$80 per half hour, or \$4,160 annually. This is a significant expense, representing almost a 20% increase in the direct costs of producing the show.

Regarding factor two, the impact on Television Wisconsin’s operations, Television Wisconsin demonstrates in the attached affidavit that the cost of captioning far

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<sup>2</sup> 47 C.F.R. § 79.1(f)(1).

<sup>3</sup> 47 C.F.R. § 79.1(f)(2); *see also* 47 U.S.C. § 613(e).

<sup>4</sup> *See* 47 U.S.C. § 613(e).

exceeds the show's revenues. "Sidelines" is currently produced at an approximate yearly cost of \$21,320, with associated advertising revenue of \$2,756. There is no syndication revenue for "Sidelines." Given the costs to caption, adding additional expense at this time does not make good business sense because these additional costs tip the scales against economic viability for the program. Accordingly, if required to caption the program, Television Wisconsin would cease producing "Sidelines."

Under the third factor, the financial resources of Television Wisconsin, the licensee submits that while the station is cash-flow positive after payment of its operating expenses, station revenues are reinvested in new equipment, including equipment needed in connection with the DTV transition and debt service. Capital needs and expenses result in no immediate economic return to the owners. Moreover, WISC-TV is one of several commonly owned stations, and the cash flow from this station helps those other stations in their efforts to fund the costs of the DTV transition.<sup>5</sup>

Under factor four, the type of operations of Television Wisconsin, the station is operated by a family owned small business led by its president Elizabeth Murphy Burns. Television Wisconsin produces other local news and public affairs programs and is dedicated to serving the local needs of the community. Television Wisconsin believes that it is important to continue providing local programming. Despite its extensive roots in the Madison community and commitment to localism, Television Wisconsin's resources are far more limited than the national giants of the broadcasting industry. Accordingly, it must act prudently in making decisions about production costs of local programming where, as here, such costs constitute a significant expense.

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<sup>5</sup> These stations include four other TV stations: KXLY-TV (licensed to Spokane Television, Inc.), KAPP-TV and KVEW-TV (licensed to Apple Valley Broadcasting, Inc.), and WKBT-DT (licensed to QueenB Television, LLC), as well as 11 full-power AM/FM broadcast stations.

### *Conclusion*

As demonstrated above, compliance with the captioning rule would pose a significant difficulty or expense and an "undue burden" for purposes of Section 79.1(f). For the foregoing reasons, Television Wisconsin respectfully requests an exemption for a period of three years from the closed captioning requirement for the "Sidelines" program. This three-year period would give Television Wisconsin an additional opportunity to obtain advertising, sponsorships and syndication revenues to justify the costs of captioning.

Television Wisconsin requests FCC approval to continue carrying the program on Station WISC-TV, WISC-DT and the station's multicast UPN channel, to carry the program on commonly owned station WKBT(TV), and to make the program available for distribution on other broadcast stations without the requirement to provide closed captions.

Respectfully submitted,

Television Wisconsin, Inc.

By: 

Robert J. Rini  
Jonathan E. Allen  
Rini Coran, PC  
1615 L Street, NW, Suite 1325  
Washington, DC 20036  
202-296-2007  
*Counsel for Television Wisconsin, Inc.*

<b>SIDELINES</b>				
<b>Personnel</b>	<b>Rate</b>	<b>Annual Rate</b>		<b>Show Revenue</b>
Host	\$125.00/show	\$6,500		\$53.00/show
3 Talent	\$275.00/show	\$14,300		
Tape (30m)	\$10/show	\$520		
	<b>Annual Total:</b>	<b>\$21,320</b>		<b>\$2,756.00</b>

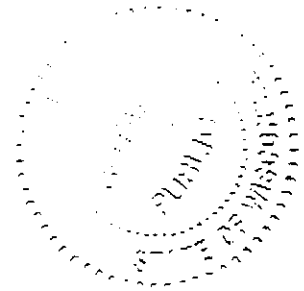
The affiant further says not.

Thomas Bier  
Thomas Bier

STATE OF WISCONSIN  
COUNTY OF DANE

On this 30 day of December, 2005, personally appeared before me, the above named Thomas Bier, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing instrument to be his free act and deed, before me.

Rhea J. Wallis  
Notary Public  
Print Name Rhea J. Wallis  
My Commission expires: August 23, 2009





## AFFIDAVIT

I, Thomas Bier, under oath, hereby state as follows:

1. I am the Vice President and Station Manager of Television Wisconsin, Inc., licensee of Station WISC-TV and WISC-DT, Madison, Wisconsin. Television Wisconsin also owns and operates a multicast channel, *UPN14*, using a portion of the *WISC-DT* spectrum.
2. Television Wisconsin, Inc. produces and distributes "Sidelines," a local 30-minute program that is carried on WISC-TV, WISC-DT and UPN14, as well as on an unaffiliated LP station, WMLW-LP in Milwaukee, Wisconsin.
3. "Sidelines" is a weekly sports talk program with a panel of local sports writers and broadcasters. Discussion centers on items of local sports interest, which is primarily the University of Wisconsin sports. However, other topics include coverage of other professional and nonprofessional sports teams in Wisconsin. Those non-professional sports include local high school teams. "Sidelines" is produced at an approximate yearly cost of \$21,320 with associated advertising revenue of \$2,756.00. The show currently airs three times per week on WISC, up to three times per week on UPN14, and once per week on WMLW-LP.
4. "Sidelines" is locally produced and distributed non-news programming. Although the program is aired several times per week, it deals primarily with issues and events of local interest. It has limited repeat value because it deals with current sports topics from the broadcast week.
5. Television Wisconsin relies on outside contractors for closed captioning. Based on Television Wisconsin's most recent captioning contract, the approximate cost to caption comparable programming is \$80 per half hour of programming, or \$4,160 per program per year. As shown in the attached summary, the cost of captioning alone exceeds each show's advertising revenue.
6. Although "Sidelines" is not a profitable program, Television Wisconsin airs the program to provide local programming of interest to the viewing public in our community that would not otherwise be available. Television Wisconsin is cash-flow positive after payment of its operating expenses, but station revenues are reinvested in new equipment, including equipment needed in connection with the DTV transition and debt service. Revenues from this station are used to help other commonly owned stations fund the costs of the DTV transition.
7. Absent an exemption from the captioning requirement, Television Wisconsin will cease producing and broadcasting this local program due to the additional financial burden associated with the captioning costs. Television Wisconsin intends to use any exemption period granted by the FCC for purposes of finding alternative means of funding for the program, including outreach to other Wisconsin broadcasters who may want to provide the program.